IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.568 OF 1985

Shri Ram Kishore Chetram Sharma)
Indian Inhabitant, residing at 23/678)
1st Floor, Pant Nagar, Ghatkopar)
Bombay 400 077.).. Appellant
(Org.Plaintiff)

Versus

Shri Deo Prabhakar Ram Sahai)
Tripathi, also an Indian Inhabitant)
and residing at 15/3, Satyapal Singh)
Chawl, Laxmi Udyog Nagar, Bhandup)
Bombay 400 078.).. Respondent
(Org.Defendant)

Ms.J.A.Sarkhot i/b.Mr.R.V.Govilkar for the Appellant.

Mr.Nitin Jamdar i/b.M/s.Purohit & Co. for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 2ND DECEMBER 2004

ORAL JUDGMENT :

. This First Appeal challenges the judgment and order dated 2nd August 1985 passed by the Judge, City Civil Court, Bombay in Special Civil Suit No.2305 of 1976.

2. The facts involved in the present case are as follows :

. On 28th April 1975, the Respondent and the Appellant decided to enter into a partnership agreement

to run a tea stall on the railway platform. The Respondent was likely to be allotted a tea stall on the railway platform for which he was required to pay some charges to the Railway Ministry. The partnership deed was entered into on 29th April 1975. A licence was issued by the Railway Ministry in the name of the Respondent on 30th June 1975. On 2nd July 1975, the Appellant paid an amount of Rs.10,000/- as agreed to the Respondent. It appears that on 31st July 1975, the Appellant demanded his money back from the Respondent. On 1st August 1975, the Respondent returned the money to the Appellant. A deed of dissolution was signed on 1st August 1975. On 25th November 1975, the Railway authorities allotted an open plot at Ghatkopar Railway Station to the Respondent instead of a regular tea stall. After construction of the stall on the open plot, an inauguration was held on 27th December 1975 when the Appellant was not present.

3. A Suit was filed by the Appellant for (i) a declaration that the partnership business between him and the Respondent was valid and subsisting in terms of the agreement dated 29th April 1975, (ii) for a mandatory injunction restraining the Respondent from interfering with the Respondent’s right of participating in the business and (iii) for rendition of accounts and recovery of dues from the Respondent. The trial Court

has held that the partnership had been dissolved on 1st August 1975 and that the Respondent had returned the amount to the Appellant on this date. The trial Court was of the view that since the partnership had been dissolved on 1st August 1975, the Appellant is not entitled to any of the terms and conditions in the partnership deed dated 29th April 1975. The trial Court has also come to the conclusion that the Appellant was not prevented from continuing with the partnership business from 1st January 1976 since the partnership had already been dissolved on 1st August 1975. The trial Court, therefore, dismissed the Suit with costs.

4. According to the Appellant, he was an illiterate person and working as a Manager in a tea stall on one of the Railway Stations in Mumbai. The Appellant claims to have entered into an agreement to run the tea stall with the Respondent in partnership. Moreover, according to the Appellant, although it is claimed by the Respondent that the partnership had been dissolved on 1st August 1975, the deed of dissolution does not bear his signature and therefore he cannot be ousted from the partnership deed. The Appellant also claims that the registration of the partnership firm was done by one Advocate Borude who had been given the form for registration of the partnership and without consent of both the partners had registered the partnership deed.

The Appellant then claims that although his signature is denied on the deed of dissolution, the partnership still subsisted since it had been registered.

5. The Respondent on the other hand claims that the Appellant was only his financer and once the Appellant realised that the stall which was to be allotted to the Respondent was not allotted by a particular date and he was not to get any returns from the investment made by him, he i.e. the Appellant demanded the return of Rs.10,000/- that was paid towards the business. The Respondent claims to have returned this amount and, therefore, submits that the partnership is not existing. He also claims that the Appellant did not attend the inauguration ceremony of the stall which was later allotted to him obviously because he was no longer a partner of the firm.

6. The whole controversy turns upon the question as to whether the partnership was in fact dissolved and whether the Appellant had any right to the profits from the business of running a tea stall.

7. All the evidence and material has been considered by the trial Court. The trial Court has also considered the fact that the documents i.e. the deed of dissolution is very clear and the Appellant has in fact

signed the same knowing fully well that the partnership had been dissolved. The trial Court has also considered the fact that the evidence of the Appellant indicates that the amount of Rs.10,000/- which he had paid to the Respondent had been returned and, therefore, the partnership did not exist when the stall was allotted to the Respondent. The trial Court has also considered the fact that the Respondent had signed several forms and other papers in respect of the formalities. Once the deed of dissolution had been signed by the Appellant, he could no longer claim to be a partner of the firm.

8. On the question whether the partnership continued because it was allegedly registered after the date of dissolution, the trial Court has considered the fact that the Advocate Borude had registered the firm on 20th December 1975 without the knowledge of either party. While the partnership deed had been drawn up by Mr.Borude, he was not informed of the deed of dissolution. The evidence indicates that the Advocate got the firm registered, not having knowledge of the fact that the partnership had already been dissolved. The trial Court has considered all these factors. In my view, no other view could have been possible.

9. Hence, First Appeal dismissed.